

## Ethics and Conflict of Interest Laws Applying to Trustees

*This Trustee Essential covers:*

- *Actions you must not take as a library trustee*
- *Business and employment relationships with the library that are prohibited to the trustee*

Most library trustees will rarely encounter situations that invoke ethics or conflict of interest concerns, but familiarity with state and local laws on ethics and conflict of interest will alert you to potential problems. In addition, trustees should keep in mind the potential for damage to the image of the library if any board member or staff member takes an action that appears to involve a conflict of interest.

Wisconsin's ethics and conflict of interest laws for public officials (including library board members) are complex—and local ethics ordinances may add further complexity. Therefore, if you have concerns about the propriety of an action, be sure to seek advice from the municipal attorney, the municipal ethics board (if you have one), or the county corporation counsel.

Wisconsin's primary ethics and conflict of interest law is the code of ethics for local officials (Wisconsin Statutes Section 19.59), but many other laws also apply. Wisconsin's criminal code prohibits public officials from, among other things, private interests in public contracts, misconduct in public office, and bribery. In addition, the "incompatibility doctrine" prohibits library board members (or other municipal officials) from holding most other positions with the library or municipality.

### Code of ethics for local officials

Wisconsin's code of ethics for local officials prohibits a trustee from taking any official action that produces a substantial financial benefit to the trustee, the trustee's family, or an organization in which the trustee has a significant financial interest. (This law does not prohibit reimbursement of actual and necessary expenses incurred in performance of board duties outside the municipality, if the reimbursement is authorized by the library board. In addition, per diem payments and reimbursement of mileage and other necessary expenses incurred in performing board duties are legal if authorized by the library board *and* the municipal governing body.)

So, what should you do if you have a conflict of interest on an issue on a library board meeting agenda? The Wisconsin Ethics Board suggests that if a matter in which you should not participate comes before the board, you should leave for that portion of the board's meeting involving discussion, deliberations, or votes related to the matter. The meeting minutes should reflect your absence from that portion of the meeting.

## Acceptance of gifts

Wisconsin law prohibits soliciting or accepting anything of value if it could reasonably be expected to influence your vote, official actions, or judgment or could reasonably be considered as a reward for any official action or inaction.

An even more stringent section of the law prohibits accepting anything of “substantial value” offered because of a public position.

The Wisconsin Ethics Board recommends that you answer the following questions to analyze a situation in which you are offered items or services:

1. With respect to the item or service offered:
  - a. Is it being offered because of my public position?
  - b. Is it of more than nominal or insignificant value?
  - c. Is it primarily for my personal benefit rather than for the benefit of my local unit of government?

If you answer “yes” to all three questions, you may not accept the item or service.

2. Would it be reasonable for someone to believe that the item or service is likely to influence my judgment or actions or that it is a reward for past action?

If you answer “yes,” you may not accept the item or service.

## Private interests in public contracts

As a library trustee, you must take great care if you conduct business with the library. It is a felony under Wisconsin Statutes Section 946.13(1)(b) for you, in your official capacity, to participate in the making of a contract exceeding \$15,000 if you have a direct or indirect financial interest in the contract.

In addition, this section provides that you may not in your **private** capacity negotiate or bid for or enter into such a contract in which you have a direct or indirect financial interest, if in your public capacity you are authorized or required by law to participate in the making of the contract. Because this section of the law applies to private actions, liability cannot be avoided merely by withdrawing from board involvement with the issue.

Note that Wisconsin’s law prohibiting public officials from having a private interest in public contracts includes certain exemptions, including an exemption for contracts involving receipts and disbursements of under \$15,000 per year.

## Misconduct in office

This section of Wisconsin’s criminal law (Section 946.12) applies to both library trustees and library staff. This law makes it a felony to intentionally take actions in excess of your legal authority, or to intentionally make false records or statements. Intentional failure to perform a duty required by law is also prohibited. Moreover, it is a felony to take actions inconsistent with the rights of others and performed with intent to obtain a dishonest advantage.

## **Employment and “incompatible” positions**

The Wisconsin Supreme Court has ruled that the same person cannot simultaneously hold two municipal offices or an office and a staff position where one post is superior to the other or where, from a public policy perspective, it is improper for one person to discharge the duties of both posts. Therefore, it is improper for a library board member to be employed by the library.

A good rule of thumb for you to follow is that you cannot hold more than one office or position with your library or municipality unless specifically authorized by statute.

You should also note that according to Wisconsin Statutes Section 43.17(1), no employee of a member library may be appointed to the board of the library system serving that library.

## **Penalties**

Any person who violates Wisconsin’s code of ethics for public officials may be required to forfeit up to \$1,000. Violations of the “private interests in public contracts” law can result in fines of up to \$10,000 or imprisonment for not more than two years, or both.

### **Discussion Questions:**

1. Why does state law make it generally illegal for a library board member to be financially involved with library business?
2. What should you do if you may have a conflict of interest with an item on the board meeting agenda?
3. Is it appropriate for a library board member to serve on the board if he/she has a relative on the library staff? Why or why not?

## **Sources of Additional Information:**

Your municipal attorney, local ethics board, or county corporation counsel.

The League of Wisconsin Municipalities’ discussion of Wisconsin’s ethics and conflict of interest law available at <http://www.lwm-info.org/legal/faq/faq4.html>.

The Wisconsin Ethics Board overview of ethics and conflict of interest laws for local officials (at <http://ethics.state.wi.us/LocalOfficials/LocalOfficial1.htm>)

*This Trustee Essential provides only a general outline of the law and should not be construed as legal advice in individual or specific cases where additional facts might support a different or more qualified conclusion.*

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